

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

BROADBAND PCS C AND F BLOCK
INSTALLMENT PAYMENT ISSUES

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WT Docket No. 97-82
DA 97-679

The National Association of Black Telecommunications Professionals, Inc., ("NABTP") respectfully submits its comments in the above-captioned proceeding.

NABTP is a proponent of restructuring the C and F Block repayment schedule to suspend all payments until the fifth year of a license (coupled with rigorously enforced facility build out requirements) along with the repayment of the balance of the principal and interest over the remaining five year schedule.

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COMMENTS

The NABTP was formed in 1991 as a not-for-profit corporation dedicated to the advancement of minorities specifically within the field of telecommunications. Among other things, the NABTP identifies and analyzes technology issues that intersect with issues relevant to minority telecommunications professionals nationally, highlights those issues for our membership, and for legislative and regulatory entities.

It is our belief that the current C and F Block repayment schedule will negatively impact upon minority ownership opportunities, minority employment opportunities, and competition. The current schedule whereby interest only payments must be submitted quarterly for the first five (5) years of the license and interest plus principal during years six (6) through ten (10) is a serious drain on the financial resources of the C and F Block PCS licensees; namely minority and women-owned businesses, and small businesses. This financial obligation seriously impedes the C and F Block PCS licensees ability to negotiate competitive financing terms and the ability to attract investors. The current FCC payment schedule requires licensees to choose

between using scarce capital to build facilities and markets or to pay down license debt.

NABTP is a proponent of revising the current Federal Communications Commission (FCC) schedule. We believe that restructuring the C and F Block repayment schedule to suspend all payments until year five (5) of a license (coupled with strictly enforced facility build out requirements); along with the repayment of the balance of the principal and interest over the remaining five (5) years is a practical and necessary step. Such a restructuring would be in the best interest of minority and women owned C and F Block PCS licensee businesses thereby expanding ownership, employment opportunities, and competition.

CONCLUSION

NABTP believes that restructuring the C and F Block repayment schedule will provide a number of significant benefits. C and F Block licensees would benefit by being given the opportunity to build facilities and develop markets before payments to the FCC become due. Minority, women, and small business licensees would benefit by a reduction in the number of C and F Block defaults. A

restructuring of the repayment schedule coupled with enforcement of facility build out requirements would dictate that current staffing levels be increased thereby creating new employment opportunities for minorities. And last but not least, C and F Block licensees would have a real opportunity to accomplish the purpose for which they were authorized - increased competition.

Respectfully submitted,

NABTP, INC.

A handwritten signature in black ink, appearing to read "Nathan Roberts", written over a horizontal line.

Nathan Roberts

Attorney at Law

7442 Ahern Avenue
St. Louis, Missouri 63130
(314) 862-5853

May 20, 1997

DOCKET FILE COPY ORIGINAL

INTEGRATED COMMUNICATIONS GROUP

1122 East Green Street

Pasadena, CA. 91106

818.304-0629

RECEIVED
JUN 23 1997
FCC
June 20th, 1997

Mr. William F. Canton
Secretary
Federal Communications Commission, Room 222
1919 M Street NW.
Washington, DC 20554

Reference: WT Docket 97-82 C & F Block Installment Payments

Dear, Mr. Cannon

Integrated Communications Group competed in the broadband Personal Communications Services (PCS) auction. The company only participated in the portion of the auction reserved for entrepreneurs. We were successful in acquiring ten markets, two in the 30 MHz auction, and eight in the 10 MHz band.

The overriding purpose behind reserving some spectrum for entrepreneurs was to provide an opportunity to participate in the process. It was by no means a guarantee of anything else. Many companies worked diligently for years to develop business plans that fit within the Commission rules. A great deal of effort was put forth by the FCC to promote the small businesses and we applaud that effort. However changes in the attitudes of Congress, the courts, and the open markets have been brought to bear on those of us who have participated in the auctions.

We agree in principal with the overall views of the C & F- block companies that have prompted this discussion. There are a number of things within the control of the FCC that will move this process forward. We believe that with some modifications to the rules the Commission and the operators will both be able to achieve their stated objectives. However we do not believe that a one size fits all approach will yield the desired results.

We would look favorably on any changes in the terms of the financing. We would be in favor of raising the non-attributable investor percentage. We do not want to change the control group. Greater flexibility on license transfer and construction requirements would be helpful. We also support increasing the foreign ownership percentage.

Our greatest concern about this proceeding is that decisions that we made in the F-block not become a casualty of the C-block. We have endured the hardships of this process and we have played by the rules. We would strongly recommend that the Commission offer a menu of options that would allow all companies to select a number of items that would address the issues in their markets.

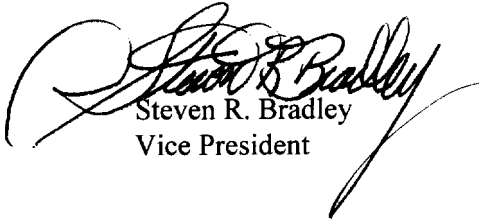
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We believe that a child that grows-up in Russell, Kansas or Hope, Arkansas ought to be afford the same level of communication services as those that call New York or Los Angeles home. Failure of the Commission to recognize that the market does not value the rural areas to the same degree they do urban markets would only favor the larger companies.

We feel the public interest of all Americans can be address in a competitive market place that is inclusive of all it's citizens. We urge you to act swiftly and decisively on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven R. Bradley". The signature is stylized with large, flowing loops and a long, sweeping underline that extends to the right.

Steven R. Bradley
Vice President

RECEIVED
JUN 23 1997
INTEGRATED COMMUNICATIONS GROUP
1122 East Green Street
Pasadena, CA. 91106
818.304-0629

June 24, 1997

Mr. William F. Canton
Secretary
Federal Communications Commission, Room 222
1919 M Street NW.
Washington, DC 20554

Reference: WT Docket 97-1152

Dear, Mr. Cannon

Integrated Communications Group competed in the broadband Personal Communications Services (PCS) auction. The company only participated in the portion of the auction reserved for entrepreneurs. We were successful in acquiring two markets in the 30 MHz auction, BTA # 37 Bemidji, Minnesota & BTA # 456 Victoria Texas.

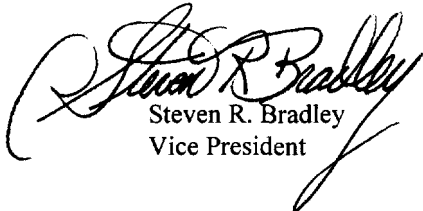
Section 24.711 (b) (3) of the Commission's Rules provide that, for small businesses interest, on installment payments "shall be imposed based on the rate for the ten-year U.S. Treasury obligation applicable on the date the license is granted". We believe that a waiver of Section 24.711 (b) (3) is appropriate and should be granted to all similarly situated entities, whether or not they have filed a request for waiver.

The intent of Congress and Section 309(j) of the Communications Act requires the Commission to promote the dissemination of licenses among a wide variety of auction applicants. To implement Section 309(j), the commission adopted a program to allow small businesses to pay for their licenses in installment payments. Neither the Congress nor Section 309 (j) requires that some entities receive differential treatment or a disadvantage by receiving inferior loan terms or conditions. Those entities that were granted their license after September 17, 1996, are subject to a 6.5% interest rate.

Neither the companies that were granted their licenses before September 17, 1996, nor those similarly situated entities granted licenses after September 17, 1996, had any control over the date the FCC granted the licenses. The only distinction appears to be that those who were granted their licenses after September 17, 1996, had challenges filed with the FCC for alleged violation of FCC rules. Should similarly situated entities, especially those whose apparent compliance with FCC rules receive terms and conditions that are less favorable than companies that were in question?

We believe the only fair thing to do would be to grant the waiver to all parties.

Sincerely,



Steven R. Bradley
Vice President

R.F.W. INC.
580 Fifth Avenue
27th Floor
New York, New York 10036

RECEIVED
JUN 23 1997
FCC MAIL ROOM

Via Federal Express

June 20, 1997

William Caton, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Comments Re: Public Notice - WT Docket 97-82

Dear Secretary Caton:

In connection with Public Notice of the Federal Communication Commission (the "FCC") dated June 2, 1997, I am writing to provide our comments concerning proposals for the restructuring of C- and F- Block license payments. Our company, which was awarded one of the C-Block licenses, qualified as both an "Entrepreneur" and a "Small Business," and will act as a local exchange carrier in the area covered by the license and as a reseller of Personal Communications Services ("PCS") across the United States. We are writing in support of the Position Paper submitted to the FCC by the National Association of PCS Entrepreneurs ("NAPE").

It is our understanding that Congress and the FCC took the initiative in creating the C- and F-Block spectrums as the Entrepreneur's Block in order to foster competition in the wireless communications industry, by providing access to licenses for the smaller, entrepreneurial companies such as ours. As a result of such initiative, C- and F-Block licenses were awarded to more than 80 independent, entrepreneurial companies, including RFW. Owing to this initiative, RFW and other licensees that qualified as Small Businesses, were able to participate in the industry along with other Entrepreneurs. The inclusion of such Small Businesses and entrepreneurs created the potential for true competition within the wireless communications industry, among both facilities and non-facilities based providers. The potential for competition is particularly important to the creation of real opportunities for carriers and resellers, such as RFW, through whom lower prices may be made available to the American public.

RFW, along with the other companies in this group, also plans to offer innovative wireless communications products and services to the American consumer. But various factors, including the need to make payments to the FCC under the current license payment schedule, have made it difficult, if not impossible, for Small Businesses and Entrepreneurs to obtain the funds necessary to develop their products and services. Access to capital by small businesses is, as you are undoubtedly aware, always limited, but for small businesses in the PCS industry, capital has become even more limited, as the combined result of licensing delays, the enormous costs involved in launching a PCS

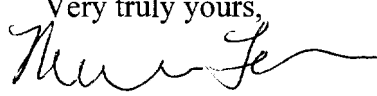
Secretary William Caton
Federal Communications Commission
June 20, 1997
Page 2

business, and devaluation by the public markets of securities issued by companies in the wireless industry, in particular, the securities of new entrants. Delays in holding the Entrepreneurs' Block license auctions have given the larger and more established telecommunications companies the advantage of time, in addition to their inherent advantage of greater internal financial resources and access to external funding sources. Effective action must be taken soon if Small Businesses and Entrepreneurs are to have any real chance of competing in the wireless communications industry.

Aware of the financial difficulties facing Entrepreneurs, the FCC suspended payments for an undefined period in March of this year. This action helped Small Businesses and other Entrepreneurs for a short period, but in the absence of a definite time period for suspension of payments, we have had difficulty determining the amount of capital we will need to launch our businesses and the time required to do so. The absence of certainty as to such matters has created even greater obstacles to our securing financing, without which we will not be able to succeed. The repayment schedule for C-Block licenses, which is currently under suspension, provided for quarterly payments of interest for six years and of principal and interest for the remaining 10-year term of each license, while the F-Block licenses have varying payment schedules.

In light of the foregoing factors, RFW supports NAPE's position, which calls for suspension of all license payments for the first five years of each Entrepreneur's license term. Restructuring license payments in this manner should enable Small Businesses and other Entrepreneurs to comply with existing network build-out requirements -- which we expect to be strictly enforced, while meeting their financial commitments to the U.S. Government. We strongly believe that adoption of NAPE's position will result in the creation of additional jobs across the country and increased competition and lower prices for the American consumer.

I am attaching for your reference a copy of NAPE's position papers, which describes the restructuring of license payments as described above.

Very truly yours,

Meilech Friedman
President

MF/jp

Enclosure

cc: Auctions and Industry Analysis Division,
Wireless Telecommunications Bureau
Attention: Saude Taxali

POSITION PAPER
Financial Restructuring of PCS Entrepreneurs Blocks (C&F) License Payments
May, 1997

The National Association of PCS Entrepreneurs [NAPE] proposes that the Federal Communications Commission [FCC] reconsider the current schedule by which licensees for C and F Block Personal Communication Services [PCS] are expected to pay for their PCS licenses. NAPE was formed in May of 1996 for the explicit purpose of representing the common interests of all C&F Block PCS licensees. This position paper represents one of the most common interests currently existing among C&F Block licensees.

Background: The C&F PCS Blocks were set-aside by the FCC for *Entrepreneurs* -- primarily minority and women-owned businesses, small businesses, and rural telephone companies. The purpose of this preference was to ensure opportunity for such businesses to enter the emerging wireless communications market, create new jobs, and foster competition that will benefit of consumers. The annual gross revenue limits used to qualify entrants for the "Entrepreneurs Block" served to preserve the preference for small businesses and also ensured that winning bidders would *not* have substantial amounts of cash readily available to finance the build out and marketing of their new wireless services. Delays in starting the C&F Block Auction allowed the larger service providers (primarily RBOCs and Long Distance Carriers) who had secured PCS licenses in an earlier auction, to gain a competitive edge on the C&F Block licensees. This competitive edge was most clearly demonstrated in the lack of vendor financing available to C&F Block licensees (many vendors had "maxed-out" their financing capabilities with the larger A&B Block carriers who acquired their licenses much earlier) and the lack of interest in C&F Block carriers among the capital markets (they, too, had "maxed-out" their risk taking with the larger carriers). This, coupled with recent increases in interest rates have all but dried up the high yield market for C&F Block licensees. The net result, one year after the C&F Block Auction, is that many licensees must finance their system build out with internal resources. Although the FCC's original commitment to finance C&F Block license payment over the ten year term of the license appeared benevolent and supportive initially, the financial burden posed by the current repayment schedule has become an albatross around the necks of the C&F Blocks. The current schedule for C Block licensees¹ requires interest only payments be submitted quarterly (although payment was suspended until the end of the year) for the first six years of license; interest plus principal payments during years seven through ten. This financial obligation to the agency of license substantially inhibits C&F Block licensees' ability to negotiate competitive vendor financing terms and generate interest among potential investors. They are forced to choose between using scarce capital to pay down license debt, or aggressively build-out their markets and they can't do both.

Position: In consideration of these circumstances, and to ensure that the FCC and the American public realize the competition envisioned by those who created the entrepreneurs block, NAPE proposes that the FCC restructure the C&F Block financial obligation for license payment by suspending all payments due until the end of the fifth year of license (coupled with strict enforcement of network build out requirements); with the balance of principal and interest

¹ F Block licensees have a different payment schedule ranging from interest only for the first two years after license issue to principal and interest over ten years.

paid over the remaining five years of license. Such restructuring would serve the best interests of the government, the C&F Block licensees, and the American consumer.

The FCC would benefit by avoiding the possibility that it would: [a] force defaults by demanding all cash available to C&F Block licensees; [b] be compelled to re-auction defaulted licenses, risking the possibility that final bids in a re-auction would be far, far less than those achieved during the initial C&F Block auctions; [c] be responsible for collapse of the competitive market envisioned when the C&F Blocks were created.

The C&F Block licensees would benefit by: [a] being given the opportunity to concentrate their resources on build out and marketing of their new wireless services; [b] being able to develop a stable cash flow before payments to the FCC become due and payable; [c] having the real opportunity to serve the purpose for which they were created - a competitive market.

The American consumer would benefit by: [a] competitive wireless communication pricing that would evolve as a result of a viable entrepreneurial segment among the carriers; [b] new jobs created by these entrepreneurs whose current staffing (as opposed to the A&B Block licensees) would not be sufficient, thus requiring C&F Block licensees to increase employment; [c] innovations in service that would be spearheaded by entrepreneurs compelled to compete against the large carriers by offering new, or more comprehensive, or more community specific services.

Submitted by:
Michael V. Roberts, Chairman
National Association of PCS Entrepreneurs
1408 No. Kingshighway Suite 300
St. Louis MO 63113
[314] 367-4600

On

Communications

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JUN 23 1997
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June 20, 1997

Mr. William Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D. C. 20554

Re: Comments With Respect to Public Notice - WT Docket 97-82

To Whom It May Concern:

Please find, attached with this letter, a copy of OnQue Communications, Incorporated ("OnQue") comments concerning proposals for restructuring C and F block PCS license debt, as requested by the Wireless Telecommunications Bureau ("Bureau") in Public Notice - WT 97-82. OnQue was awarded five C block licenses and four F block licenses in Oklahoma, Arkansas, Texas and Washington.

In these comments, OnQue compares the original Commission language supporting the designated entity policies to actual turn of events since the auctions. In light of recent financial set backs and fund raising failures of many of the C block licensees, OnQue takes the position that the Commission's designated entity rules provide more harm to small businesses than good. Previous Commission orders and Congressional reports, providing sources for the current regulation, state that these designated entities have less access to capital and require rules that ease these constraints. This easing was accomplished by additional liabilities by way of license debt and first lien on assets derived from these licenses. Start up small companies with constraints, already recognized by both Congress and the Commission, are hindered by additional debt burdens and stringent equity combination rules that not only devalue the attractiveness of C or F block investments but restrain licensees from negotiating with potential investors.

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As a result of the capital market's reaction to these rules, funding is not flowing to the designated entities, networks are not being built, nor services being provided and licensed spectrum is laying dormant. This contradicts the desired policy goals of Congress and the Commission. The attached comments suggest (1) relieving the license debt, (2) easing stringent equity rules, (3) eliminating future auctions for qualifying small businesses and (4) creating a debt funding vehicle for rural PCS providers via existing agencies such as SBA or RUS. If the current rules are not immediately addressed, what was deemed as a benevolent act of Congress and the Commission will result in the worst disaster in the Commission's and the industry's entire history.

These comments contain verbiage reflecting experiences of frustrations and anxieties of licensees that are in the trenches trying to build a PCS system, with very little luck. Our recommendations are not meant to assure success for C and F block licensees but rather to allow capital markets to fund based on the individual merits and value of each licensee, not as an entire designated group. Jobs, economic growth, innovative services and consumer benefits are at stake, unless the current regulations are changed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles C. Curtis', with a stylized, cursive script.

Charles C. Curtis
President, OnQue Communications, Inc.

CCC/cc
Attachments

cc: Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Attention: Sande Taxali

Before The Federal Communications Commission

Comments on Broadband)
PCS C and F Block installment)
Payment Issues)

WT Docket 97-82
DA 97-679

June 17, 1997

OnQue Communications COMMENTS

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JUN 23 1997
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OnQue Communications, Incorporated ("OnQue") files these comments in response to the Wireless Telecommunications Bureau ("Bureau") request for additional comments or proposals addressing the C and F block broadband PCS financing terms.

OnQue participated in the Federal Communications Commission ("Commission") auctions five and eleven, submitting winning bids for five C block and four F block licenses in Oklahoma, Arkansas, Texas and Washington. Being classified as a Small Business in auction five and a Very Small Business in auction eleven, OnQue received 25% bidding credits and eighty to ninety percent ten-year financing of licenses with Treasury Note equivalent interest-only payments for the first six years. OnQue's total bid was \$7,462,500 with the financed portion of these bids being \$6,716,250. OnQue anticipates its total capital requirements to be approximately nine to ten times greater than the total winning bids leaving ninety percent of desired funds for working capital and equipment purchases, yet to be procured.

Spectrum Auctions

It is OnQue's position that the 103rd Congress and the Commission's ambitious policy goals regarding designated entities was unrealistic. In the Second Report and Order, the FCC established that PCS licenses will be issued through an auction process in accordance with Section 309(j) of the Communications Act, enacted in August 1993. In this section, Congress did not mandate auctioning of spectrum, but granted permission to do so in cases where "mutually exclusive applications for initial licenses are accepted for filing by the Commission and where principle use of the spectrum is reasonably likely to involve the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals." The Commission also decided on the use of competitive bidding procedures to "...speed the development and deployment of new services to the public and would encourage efficient use of the spectrum, as required by Section 309(j)(3)(A) and (D)."

Designated Entities

In the Fifth Report and Order (FCC 94-178), Section VII(A), the FCC states that it was mandated by Congress to "ensure that small businesses, rural telephone companies and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum based services" 47 U.S.C. Section 309(j)(4)(D). Following this mandate, the Commission developed what was deemed as policies and procedures to "level the playing field" for these designated entities. Discounting bids by 25% and ten year financing terms were deployed to achieve the Congressional mandate. Along with the financing terms and bid credits, the Commission issued rules assuring that any designated entity did not lose its control to a non-designated entity and benefit from "unjust enrichment" with regards to the previously discounted bid price and financing terms. In order to protect these policies from being abused, the Commission also put in place equity structures to assure that the applicant, qualifying as a designated entity, would maintain voting and economic control of the applicant.

Auction Policy Results

The final designated entity block auction was closed in January 1997 raising \$11 billion for the government, including the re-auction of certain licenses. Approximately \$1.1 billion was raised in cash while the remaining \$9.9 billion was financed over ten years. Twelve months after the C block auction, the vast majority of the licensees have not built or launched PCS services in their respective markets. The main reason is the lack of the financial community's interest in investing in these designated entities. It is not clear if the C and F block licensees will launch in the near future. In fact, the largest C and F block licensees have not been successful in raising the large funding requirements to purchase the infrastructure and provide sustaining start-up working capital.

The Commission decided on competitive bidding to speed the development and deployment of PCS services. With the exception of the large A and B block licensees, this objective has not been met. The Commission also decided to level the playing field for small businesses by developing procedures concerning only the auction and bidding process. The Commission orders state that by instituting bidding credits and attractive government financing of the license, the designated entities' lack of access to capital has been resolved in accordance to Congressional mandates. Considering the license price which, in most cases, is a relatively small portion of total capital requirements, these designated entities have benefitted by approximately ten to thirty percent of capital requirements being met by the Commission's license installment plan and the other sixty to ninety percent of capital requirements yet to be raised.

To further seal the designated entities' fate, the license security agreement requires timely payments of interest on these licenses without the benefit of cash flow from a developed system. PCS billing and collection of subscriber revenue cannot be expected for an indefinite period while, at the same time, designated entities face having the possibility of having the Commission revoke the licenses with penalties for failure of timely payment. This situation for all C block companies redefines the meaning of high risk to indescribable levels.

In the meantime, the A and B block PCS licensees are launching PCS services all over the United States. Sprint PCS, PrimeCo PCS, Western Wireless, etc, are offering an alternative to cellular at competitive rates and full digital service. These entities either proceeded with an initial public offering, raised capital among partners or internally funded the capital requirements and began launching markets within eighteen months from the license grant by the Commission. The incumbent cellular providers are upgrading portions of their network to digital to compete with the PCS service providers in the metropolitan areas. The C and F block licensees have made very little progress in obtaining funding for their markets, let alone building them out and launching commercial services. Instead of creating a "level playing field" for the designated entities, the turn of events resulting from the Commission policies and reactions from the financial community have created nothing less than a dangerous and unfair set of circumstances for the very entities that were supposed to be given an opportunity to participate in the wireless industry and introduce real, not perceived competition.

The Commission created its policies based on the following Congressional mandates:

1. Promote Economic Opportunity, Competition and Innovative Technology
2. Disseminating licenses among wide variety of applicants
3. Recover billions of dollars for the United States Treasury

Promote Economic Opportunity, Competition and Innovative Technology

Section 6002 of the 1993 Congressional Omnibus Budget Reconciliation Act ("COBRA") stated that the Commission must promote competition, economic opportunity and innovative technologies in the wireless market by avoiding excessive concentrations of licenses. To date, nearly five years after this legislative order, the first two allocated broadband licensees are launching services in the major metropolitan areas in the United States. Ironically, these licensees, for the most part, are large corporate entities that already provide wireless services in MSA's and RSA's throughout the United States. For example, in Oklahoma City and Dallas MTA's, the three licensees providing PCS services, Sprint PCS, PrimeCo PCS and Western Wireless, either already have cellular interests in other parts of the country or have sold existing cellular property to help fund the PCS operations.

Prices in the metropolitan portion of these markets are becoming more competitive and services are becoming more diversified. This has resulted in the Commission meeting its objective of creating competition, new jobs and innovative technology in the metropolitan areas but not by avoiding license concentration. Instead, the only operating PCS licenses in these markets are existing cellular licensees with more concentration of coverage through an expanded PCS footprint. Sprint PCS sold its cellular interests to assist in funding efforts of its PCS market build-out. PrimeCo PCS has cellular interests with AirTouch, Bell Atlantic Nynex Mobile ("BANM") and US West New Vector. Western Wireless holds several MSA's and RSA's in Montana, Wyoming, Nebraska, Kansas, Colorado, Texas, Nevada and other states west of the Mississippi.

These licensees' access to capital for build-out happened relatively quick. Some minor set-backs were encountered with these large PCS companies raising funds due to the chosen funding mechanism, such as zero coupon bonds. Despite this, the earliest commercial launch in Dallas and Oklahoma City MTA's was November 1996 and the latest launched February 1997. These commercial launches were approximately eighteen months subsequent to the A and B block license grant. In summary, what has happened to date is that, for the most part, existing cellular entities have been provided an opportunity to accumulate more commercial licenses, causing further concentration of spectrum licensing in the wireless industry under the guise of PCS.

Disseminating Licenses Among A Wide Variety of Applicants

Section 6002 of the 1993 COBRA also stated that licenses must be disseminated among a wide variety of applicants, including small businesses, rural telephone companies and businesses owned by members of minority groups and women. The last two categories were eliminated from Commission designated entity policies as a result of Adarand Constructors, Inc. versus Pena and the resulting Sixth Report and Order (FCC 95-301). The Commission set aside two frequency blocks and 986 licenses for these categories and assisted further with bidding credits and debt installments.

Since the license grant of most C block licenses, in September 1996, the vast majority of applicants have not launched services or even succeeded in obtaining the Commission defined "easier access to capital". Out of the total auction winners, the top five, consisting of approximately 70% of the pops held, have not launched. Nextwave, GWI and DCR have failed to sell stock through an initial public offering while BDPCS has defaulted when failing to pay the second down payment. As it stands, 170,127,400 people will not have a wide variety of pricing and technology alternatives from which to choose wireless services. The only choices will be the two existing cellular and two more large cellular companies that have acquired these markets through the A and B block auctions. If the capital markets are rejecting these C and F block entities, the smaller ones do not have a chance.

The only exceptions are those successful C and/or F block licensees that are offering services under questionable *de facto* - *de jure* control or pre-existing natural business relationships that have aided the funding process through relationships with a PCS A or B block licensee.

Recovering Billions of Dollars for the United States Treasury

After the eleventh auction, the Commission had raised approximately \$21 billion from the sale of the A, B, C, D, E and F block licenses. Of this, \$11 billion was accounted for the C and F block small businesses or approximately half of the total. The Commission has collected approximately ten to fifteen percent of these bids in the form of down payments with the remaining balance being financed over ten years. With the failure of designated entities to raise the capital, build the network and bill revenue, the probability of the Treasury collecting the remaining \$9 to 10 billion are tenuous, at best. First and foremost, the applicants have no cash flow streams. Secondly, capital markets are not impressed by the license debt for virtually the same type licenses that were lottery issued in the eighties. Lastly, four wireless players already have a presence in most major U.S. cities and the further delay of the C and/or F block licensee from launching devalues further the attractiveness of such an investment.

A Vacuum Policy For Worthy Objectives

Congressional mandate for a variety in commercial license holders, including small businesses and rural telephone companies is a worthy objective for not only the entrepreneurs involved but, more important, for the general public. However, any government or regulatory policy created to achieve this objective cannot be assured. Such a result can only happen through the forces of the free market system. By creating an additional liability, through license debt, for applicants that have already been described by Congress and the Commission as entities with little or no access to capital, not only falls short of such an objective but further inhibits it from ever happening. Therefore, the Commission's existing policy to meet the Congressional mandate is destined for failure. These licensees should pass or fail a valuation test, by the capital markets, on their own merits and not based on public policy decisions.

For whatever reasons the capital markets have for the depressed valuation of these licensees, the fact remains that the Commission's policies excluded an important factor in accomplishing the goals Congress set out; dependence on large capital requirements coupled with the independence of capital market decision making. The Commission cannot force commercial banks, Wall Street or the private placement markets to invest in start-up wireless applicants. Also, discounting the bid price and implementing installment payments does not, in itself, create value in these applicants. If anything, the additional financial constraints devalue a licensee.

The auction policies, notwithstanding the designated entity attributes, make an investment in start-up designated entities less favorable. Investors could just as easily invest in companies purchasing, enhancing or expanding existing cellular licenses due to the fact that there is no auction price associated with the liabilities of such a concern. The cellular license being analyzed is bringing in monthly cash flow which eliminates a large portion of risk involved with investments in a wireless company. This being the case, an alternative investment in a start-up C and/or F block licensee with spectrum debt and no cash flow will not be a comparable value and prove extremely risky due to the lingering security agreement and interest payments that are the result of well intended benevolence based on existing designated entity policies.

OnQue Proposal For C and F Block Financing Terms

By eliminating the license debt and simplifying voting privilege and equity requirements, the value of an investment in C and F block licensees increase compared to their value under current rules. Capital requirements of a start-up PCS licensee consist of license debt, infrastructure procurement and start-up working capital. The license debt portion of total capital requirements is, in most cases, as much as fifty percent of total capital required and in many cases is as low as ten percent. As a result, the majority of capital is yet to be raised and the existing market opinions are too poor to attract investment in these companies without the elimination of license debt. Even if the removal of license debt is accomplished, there is no guarantee of making the designated entities worth financing but at least it will allow the capital markets to base value on the merits of each individual company instead of classifying all designated entities as a single group which are to be avoided at all costs.

The Commission should also ease the current rules that limit passive investors to fifteen percent voting interest and twenty-five percent equity. These rules immediately put the designated entities in a position for rejection by the equity markets. Ideally, the licensees classified as designated entities should perhaps maintain control of the company but they should have the flexibility to negotiate terms and conditions with the equity markets or provide sufficient warrants or stock options to aid in the collateralization of debt facilities.

In future spectrum allocations, the Commission should evaluate auctions and competitive bidding but exempt designated entities from the auction process. Instead, qualifying applicants that fall in this category should receive licenses through the lottery or comparative hearing process. The original position the Commission held, in the Fifth Report and Order, with regards to implementing auctions for all blocks was to put in place a mechanism to "...speed the development and deployment of new services to the public with minimal administrative or judicial delay, and will encourage efficient use of the spectrum as required in Section 309(j)(3)(C)." It is the position of OnQue that auctioning licenses, especially for designated entities, cannot even be remotely described by the Commission's original intentions for such auctions.

Dealing with all the administrative problems involving analyzing applicant qualifications and corporate structure have either caused delays in the licensing process or resulted in a lack of necessary attention given to rules violations. Judicial delays, such as *Adarand* and many of the individual applicant suits, have not only failed to be avoided but can be used to accurately describe the designated entity licensing process. Finally, the possibility that the past designated entity auctions have resulting in any efficient use of spectrum is easily arguable due to the fact that forty megahertz of C and F block spectrum is, for the most part, dormant throughout the United States.

The Commission should also address the possibility of specific government or government agency lending opportunities via the Small Business Administration or the Rural Utilities Service. In rural areas, small local telephone companies are eligible for financing at rates lower than other commercial lending institutions for the purpose of bringing telecommunications services to areas that are higher in cost to develop. Since many PCS licensees are licensed in smaller markets covering rural areas, consideration should be given for similar policies for accomplishing the same goals. In many cases, the PCS licensee may offer wireless local loop in competition with an RBOC or GTE serving area. The availability of such funding mechanisms will encourage more advanced wireless telecommunications infrastructure to these regions and bring PCS services to places outside of the major metropolitan areas.

Conclusion

A combination of removing license debt, easing current equity rules, eliminating future auctions for qualified designated entities and creating governmental financing opportunities through existing agencies will create an environment that may not guarantee C and F block licensee success but will allow the success or failure of such licensees to be based upon individual merit and value. Currently, the existing rules along with the financial markets reaction have resulted in aggregation of all designated entities into a single group of unattractive investment opportunities. Both C and F block licensees have an intangible asset attached with a debt burden, no existing cash flow streams and no success in obtaining the much desired financing, making the original mandates of Congress to the Commission unattainable.

The results of the C and F block licensing process have rived, in a symbolic and ironic way, to Nathaniel Hawthorne's *Scarlet Letter* with the exception of the letters being C and F and worn not by one but hundreds of small businesses. Starting a new company is difficult in and of itself. Starting a state-of-the-art wireless telecommunications company requires large amounts of capital, good management, attractive markets, an iron will and lots of faith. The existing Commission rules add regulatory requirements that make an already difficult task virtually impossible.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Charles C. Curtis", written over a horizontal line.

Charles C. Curtis, President
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